SINGAPORE REPORTS.

GIAN SINGH & CO. v. THE BANK OF CHINA LTD.

[Orig. Civil Juris. (Jobling, J.) September 29, 1947]
[Singapore — O.S. No. 12 of 1947]

Civil Procedure — Writ of Prohibition — Application should be for Order of Prohibition — Administration of Justice (Miscellaneous Provisions) Act 1938, S. 7 — Rules of Supreme Court 1934, Preliminary Rule 2.

In this case the applicants Hardial Singh and Balwant Singh applied to the Court for a Writ of Prohibition to be issued directed to the Bank of China Ltd., the Rent Assessment Board established under the Increase of Rent (Restriction) Ordinance 1939 and the Judge for the time being of the District Criminal Court of Singapore, to prohibit them from proceeding further under an Order made by the Rent Assessment Board on 26th July 1946.

Held, (1) that the Court was bound by the decision in **G. H. Slot & Co., Ltd. v. Registrar of Trade Marks**(1) and only had power to issue an order of prohibition; (2) that prohibition only lies so long as there is something for it to operate on and it was necessary therefore for the applicants to show that some further proceedings are open to the respondents and that such proceedings if taken would be without proper authority; (3) that in this case the applicants have not shown that any person or tribunal exercising judicial functions is in a position to act without or in excess of jurisdiction and the application must therefore be dismissed.

Cases referred to :—

(1) *G. H. Slot & Co. Ltd. v. Registrar of Trade Marks* (1939) M.L.J. 276.
(2) *Ex parte Yeo Poh Neo* (1947) M.L.J. 59.
(3) *In re Singapore Improvement Ordinance, 1927* (1935) M.L.J. 170.
(4) *Cramb v. Goodwin* (1919) W. N. 86.
(5) *In re Smith, Vincent v. Smith* (1930) 1 Ch. 99.
(6) *Russian and English Bank v. Baring Brothers* (1935) 1 Ch. 124.
(7) *Osborne v. Rowlette* (1880) L.R. 13 Ch. 779.
(8) *Farquharson v. Morgan* (1894) 1 Q.B. 552.
(9) *Rex v. Kensington Income Tax Commissioners* (1917) 1 K.B. 498.
(10) *Re London Scottish Permanent Building Society* (1893) 63 L.J.Q.B. 112.

ORIGINATING SUMMONS.

H. D. Mundell (*K. A. Seth* with him) for the Applicant.

C. H. Smith (*R. C. H. Lim* with him) for the Respondent.

Jobling, J. : — In this matter the applicants Hardial Singh and Balwant Singh seek an order of the Court that a Writ of Prohibition may issue directed to the Respondents namely the Bank of China Limited, the Rent Assessment Board established under the Increase of Rent (Restriction) Ordinance 1939 and the Judge for the time being of the District Criminal Court of Singapore, to prohibit them from proceeding further under an Order made by the Rent Assessment Board on 26th July 1946.

The first point to be considered in this matter is whether this Court has jurisdiction to entertain the proceedings. It was contended by Mr. Smith for the Respondents on the authority of the judgment in *G. H. Slot & Co. Ltd. v. Registrar of Trade Marks*(1) which was followed by myself in *Ex parte Yeo Poh Neo*(2) that Prerogative Writs had been abolished by the Administration of Justice (Miscellaneous Provisions) Act 1938 and that the proceedings were misconceived and should have been by way of application for an order of Prohibition in accordance with the procedure prescribed by that Act.

Mr. Mundell for the Applicants argued very forcibly that the Administration of Justice (Miscellaneous Provisions) Act 1938 did not apply here as it conferred jurisdiction on the English Courts and had not been specifically applied to this Colony. He contended that the procedure that had been followed in a number of cases prior to 1938 — e.g. *In re Singapore Improvement Ordinance (1927)*(3) — was not affected by the Act and was correct.

In giving judgment in *Slot's* case *(supra)* McElwaine C. J. quoted Rule 2 of the Preliminary Rules of the Supreme Court 1934 namely:—

> Where no provision for procedure is made or no appropriate form is provided by these orders and Rules, or by any law in force in the Colony, the procedure and practice and forms for the time being in force or use in the Supreme Court of Judicature in England shall, as near as may be, be followed and adopted.

and then goes on to say

> In my opinion the Administration of Justice (Miscellaneous Provisions) Act 1938, section 7 does not confer jurisdiction but merely prescribes a simpler procedure by which the jurisdiction hitherto exercised should be exercised. Instead of ordering the writ of mandamus to issue, the Court makes an order requiring the act to be done.
>
> Rule 2 is therefore effective in applying in this Colony the simpler procedure introduced in England.

In *Ex parte Yeo Poh Neo*(2) *Slot's* case was followed by me without argument but I am now however asked to say that the decision there on this particular point was wrong.

The decision is that of a Court of co-ordinate jurisdiction and although the authorities agree that the decision of a judge of first instance is not absolutely binding upon another judge of first instance of co-ordinate jurisdiction the views of individual judges of what the practice should be differ considerably.

In *Cramb v. Goodwin*[4] Bailhache J. said that although a previous decision was perhaps not strictly binding on him it was the prevailing practice of the Courts to follow a previous judgment by a Court of co-ordinate jurisdiction. In *In re Smith, Vincent v. Smith*[5] Maugham J. expressed a somewhat similar view, in the following passage :—

> I take this opportunity of repeating what I have said on previous occasions, that where a learned judge, after consideration, has come to a definite decision on a matter arising out of this exceedingly complicated and difficult legislation (Law of Property Act 1925) it is very desirable that the Court should follow that decision, and accordingly I should be strongly inclined whatever my own view was to follow what I take to be the positive decision of Tomlin, J.

And as recently as 1935 in *Russian and English Bank v. Baring Brothers*[6] Clauson J. said that "Sitting as a Court of equal jurisdiction I should of course be bound to follow this view of Bennett J." Presumably "bound" in this case means "bound by the prevailing custom".

But in *Osborne v. Rowlett*[7] Jessel M. R. refused to follow a previous decision of a Court of equal jurisdiction saying :—

> When I first had the honour of sitting here I used to think myself bound by any decision of a Vice Chancellor that was twenty years old; but the Court of Appeal in one instance held that I was not so bound. I then reconsidered my position and thought I was not bound by any decision of a Court of co-ordinate authority: accordingly I have since frequently declined to follow such authority. Here the only question I have to consider is whether, though I am not bound by **Cooke** v. **Crawford**, I ought to follow it or not.

and again at page 785 :—

> Now I have often said and I repeat it that the only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided: but it is not sufficient that the case should have been decided on a principle if that principle is not itself a right principle, or one not applicable to the case; and it is for a subsequent Judge to say whether or not it is a right principle, and, if not, he may himself lay down the true principle. In that case the prior decision ceases to be a binding authority or guide for any subsequent Judge, for the second Judge who lays down the true principle in effect reverses the decision.

On the question of the prevailing practice of the English Courts the later cases are of course of greater weight than the earlier. But I think a distinction may be drawn between decisions on matters that are essentially procedural and decisions on questions of principle which affect the merits of the case.

In circumstances which permitted me no doubt as to the proper principle to be applied in order to do justice between the parties to an action I might well conceive it my duty to differ from any court of co-ordinate jurisdiction which had laid down a different principle and do what I considered right and proper.

But where the point under consideration is a matter of procedure, as it is here — in effect at any rate, whatever it may be technically — and does not affect the Court's power to do justice between the parties, I can think of no reason that would justify me in differing from a positive decision on the point by a Court of co-ordinate jurisdiction.

In *Slot's* case alternative proceedings were instituted in order to settle the proper procedure in such applications. The matter was argued and was decided by McElwaine C. J. and I think that in accordance with the practice of the English Courts, and especially because the matter is procedural, I must follow that decision.

The objection that the proceedings were misconceived was raised as a preliminary issue but was not decided as Mr. Mundell contended that even if the objection was upheld it would not dispose of the proceedings. Mr. Mundell argued that once the Court was informed of a want of jurisdiction in the inferior Court which was apparent on the face of the record the Court must grant the relief sought whether by way of writ or order. A number of authorities were quoted in support of the contention. In *Farquharson v. Morgan*[8] Lord Halsbury at page 556 said :—

> It has long been settled that where an objection to the jurisdiction of an inferior Court appears on the face of the proceedings it is immaterial by what means and by whom the Court is informed of such objection. The Court must protect the prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior Court from proceeding in matters as to which it is apparent that it has no jurisdiction.

And in the Judgment of Low J. in *Rex v. Kensington Income Tax Commissioners*[9] the following passage occurs, namely :—

> There may be cases where this Court is asked to prohibit the proceedings of inferior Courts and where the want of jurisdiction in the inferior Court is so apparent that this Court would be bound to interfere in whatever circumstances the rule nisi was obtained. If the want of jurisdiction was sufficiently apparent the Court could be compelled to act and could not withhold relief.

I agree that on the authorities the Court is principally concerned with safeguarding the Prerogative and the proper administration of justice and it appears

to follow that once the want of jurisdiction is shown to be apparent on the record, the Court must act in such manner as is in accordance with its powers to achieve that object.

The substance of this matter is an application for relief by way of Prohibition and if sufficient grounds are shown for prohibiting the Respondents that relief may in my opinion be granted in the form of an Order of Prohibition notwithstanding that a writ has been applied for.

The fact that I hold myself bound by the decision in *Slot's* Case and only have power to issue an order of prohibition does not therefore dispose of these proceedings and I will now consider the application itself.

The facts in this matter are that the applicants were in occupation of certain premises in Singapore and the Bank of China applied to the Rent Assessment Board for an order for possession of those premises. The order, which is the order objected to in these proceedings, was made by the Board on 26th July 1946 ordering the Applicants to quit and deliver up the premises on or before 15th January 1947. The applicants failed to comply with the order of the Board and the Bank of China after obtaining the written authority of the President of the Board as required by Section 5 of the Rent Assessment Board (Additional Powers) Ordinance 1946 instituted proceedings in the District Criminal Court of Singapore under that Section by way of a private prosecution against one of the Applicants, Hardial Singh. These are the material facts but there are two others to which I must refer. First the fact that prior to instituting proceedings in the District Criminal Court the Bank of China commenced an action against the applicants in this Court for possession of the premises. This action has since been settled and the matter is only relevant because the application for Prohibition was made when the action was still pending and refers to it. Secondly, Ordinance No. 25 of 1947 which repeals the Increase of Rent (Restriction) Ordinance 1939 and the Rent Assessment Board (Additional Powers) Ordinance 1946 was brought into force during the hearing of this application with the result that the Rent Assessment Board has ceased to exist and the section under which criminal proceedings have been instituted in the District Criminal Court is no longer in operation.

It is clear from *Re London Scottish Permanent Building Society*[10] that prohibition lies only so long as there is something for it to operate upon and it is necessary therefore for the applicants to show that some further proceedings are open to the respondents and that such proceedings if taken would be without proper authority.

The civil suit commenced by the Bank of China against the Applicants has been settled and there is nothing remaining to prohibit in that matter.

But it is contended that proceedings are pending in the Criminal District Court and other similar proceedings may be instituted there which should be prohibited.

These proceedings are under section 5 of the Rent Assessment Board (Additional Powers) Order 1946 and are based on a complaint by the Bank of China Ltd. that the applicants did not comply with the Board's order of 26th July 1946. Although this Ordinance has been repealed there is no doubt that these proceedings still lie. In the first place by Ordinance No. 30 of 1947 power is given to a body called the Rent Conciliation Board to carry on proceedings commenced under the repealed ordinance and secondly the Interpretation Ordinance by Section 5 continues an offender's liability to criminal proceedings under a repealed ordinance where the liability has been incurred prior to its repeal.

Paragraphs (d) (ii) (iii) and (iv) of Section 5 read as follows :—

> (d) Where any written law repeals wholly or in part a former written law, such repeal shall not, in the absence of any express provision to the contrary, affect or be deemed to have affected (ii) any right, liberty, privilege, obligation or liability acquired, imposed or incurred under the repealed written law; (iii) any offence committed, or any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed written law; (iv) any investigation, legal proceeding or remedy in respect of any such right, liberty, privilege, obligation, liability, penalty, forfeiture or punishment as foresaid; and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been passed;

and I agree with the contention that paragraph (d) (ii) continues the President's liberty to give his consent to proceedings under Section 5 of the Rent Assessment Board (Additional Powers) Ordinance 1946 and that paragraphs (d) (iii) and (iv) continue the liability of the Applicant to proceedings in the District Criminal Court for contravention of that section.

Coming now to the real questions in this matter, what are the actual proceedings still open to the Respondents and have the Respondents authority to undertake them.

Counsel submitted that as regards the Rent Assessment Board the Board can still give its consent to the prosecution of the other Applicant Balwant Singh under Section 5 of the Rent Assessment Board (Additional Powers) Ordinance 1946 and the fact that it is the President and not the Board which may give this consent was met by the suggestion that Prohibition should be addressed to the Board and its officers and servants and would be binding on the President.

Secondly, as regards the Bank of China it was submitted that it was open to the Bank to continue its prosecution of Hardial Singh and institute similar criminal proceedings against the other applicant Balwant Singh. And thirdly that as regards the District Criminal Court it was open to the Judge thereof to hear and determine the proceedings instituted against Hardial Singh and also any other similar proceedings which may be instituted against Balwant Singh.

The applicants claim that all these proceedings would be without jurisdiction for the same reason namely that they would be founded on the Board's order of 26th July 1946 which it is alleged was itself made without authority.

This implies that the Board's order, if made with proper authority, would confer jurisdiction on the Respondents to do the acts referred to. But is this so? It is not necessary to consider this question as regards the Bank of China Ltd. as the authorities are quite clear that prohibition is for the purpose of safeguarding the prerogative and the administration of justice and is therefore only directed to persons and tribunals exercising judicial functions. In any case the Bank's right to institute a private prosecution does not depend on the Board's order but on the Criminal Procedure Code where it is expressly saved by Section 402 (8) and that right is in no way affected by the validity or otherwise of the order.

As regards the Rent Assessment Board even assuming that prohibition could be directed to its President it is apparent that authority to consent to a prosecution is a purely discretionary power conferred by Section 5 of the Rent Assessment Board (Additional Powers) Ordinance 1946. The fact that the President in considering whether or not to give his consent would be influenced by the validity or otherwise of the Board's order does not affect his jurisdiction to exercise this discretionary power.

As regards the District Criminal Court, this is a tribunal exercising judicial functions and may properly be prohibited from acting in excess of its jurisdiction. But by section 9 (1) (b) of the Criminal Procedure Code the District Court has power to "hear, try, determine and dispose of" prosecutions for offences cognizable by it which are committed within the limits of its jurisdiction and under this section the Court undoubtedly has authority to hear and determine the subject-matter of the Bank of China's complaint. This authority is quite independent of the Board's order and the fact that the Board's order will necessarily be produced in evidence at the inquiry has no bearing on the Court's power to undertake and determine the proceedings.

The Respondents' several jurisdictions to do the acts which it is sought to prohibit are therefore not dependent on the Board's order and it is unnecessary to consider whether that order was made with proper authority or not.

The applicants' real object appears to be to have the Board's order set aside in order to avoid its otherwise proper consequences. There are proceedings appropriate to this purpose but clearly it cannot be achieved by this application.

The application fails because the applicants have not shown that any person or tribunal exercising judicial functions is in a position to act without or in excess of jurisdiction and it is therefore dismissed.

Application Dismissed.

BOON HOE CHIA v. S. QURESHI.

[App. Civ. Juris. (Pretheroe, Ag. C.J. M.U., Brown, J. and Thorogood, Ag. J.) March 1, 1948]
[Singapore Civ. App. No. 17 of 1947]

Malicious prosecution — Reasonable and probable cause — Burden of proof — Malice.

On the night of the 9th March 1945, 2 persons entered the Defendant's house and assaulted him. Ikbal, a neighbour, said that he saw a man and a woman in a car outside the Defendant's house at the time of the incident.

Defendant laid an information before the Police Magistrate in whose presence Ikbal identified the Plaintiff as the man he saw in the car. The Magistrate refused process. A second information was filed and process was directed to issue against one of the 2 persons. Then followed an intervention by the Japanese Military Police and the matter appeared to be closed.

On the re-occupation the Defendant laid another information in substantially similar terms to the previous two informations and asked for a warrant of arrest against the Plaintiff for abetment of the offences alleged to be committed by the 2 persons aforesaid.

The charge against the Plaintiff was subsequently withdrawn because Ikbal went back on his original